

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 -----x
4 INTERWORKS UNLIMITED, INC., a
5 California Corporation,
6 Plaintiff,
7 -against-
8 DIGITAL GADGETS, LLC; a New Jersey
9 limited liability company,
10 Defendant.

11 Case No: 2:17-cv-4983 AB KSx
12 -----x
13 488 Madison Avenue
14 New York, New York
15
16 August 21, 2018
17 10:01 a.m.
18
19 Examination Before Trial of the
20 Defendant by CHARLES TEBELE, pursuant to
21 Notice, before CINDY A. AFANADOR, a Notary
22 Public of the State of New York.
23
24

EXHIBIT
21

<p>1 myself or my associate could make comments on 2 your changes at trial and it would affect your 3 credibility as a witness. 4 MR. LAZARUS: I think you are 5 going over the line in instructing the 6 witness, and now you are counseling the 7 witness on matters that I should be 8 counseling him on, not you. 9 If a change needs to be made, the 10 change is going to be made, and the 11 effect is for the judge to instruct the 12 jury, not for you to instruct 13 Mr. Tebele. 14 Thank you. 15 MR. HSU: I would take it that's 16 your objection, Mr. Lazarus? 17 MR. LAZARUS: Lazarus. 18 MR. HSU: Lazarus. 19 THE WITNESS: He did that 20 yesterday too, to the other two. 21 Q. Well, any objection from your 22 attorney, Mr. Lazarus, he's doing this to 23 preserve the record, so when there is a need 24 in the future, then he and I will get into 25 some kind of dispute in front of the judge,</p>	<p>1 A. Yes. 2 Q. What is that? 3 A. What is the form? 4 Q. Correct. 5 A. The form is the nature of the 6 articles of how an organization is formed. 7 Q. Was it a corporation? 8 A. No. 9 Q. Was it an LLC? 10 A. Yes. 11 Q. What is your current position at 12 Digital Gadgets? 13 A. President and CEO. 14 Q. Do you own this company? 15 A. Yes. 16 Q. How long have you worked for your 17 company, Digital Gadgets? 18 A. About ten years. 19 Q. Is it accurate to say that 20 Digital Gadgets was established or formed 21 about ten years ago? 22 A. I'm not sure exactly when it was 23 formed, but it might be a little bit more than 24 ten years ago. 25 Q. And you don't recall what year?</p>
<p>1 that's why he's doing this. 2 Did you take any medication in 3 the last 24 hours that would prevent you from 4 giving your testimony today? 5 A. No. 6 Q. Okay. 7 Other than Charlie Tebele, have 8 you ever used any other name in the past? 9 A. Charles. 10 Q. Any other names? 11 A. No. 12 Q. What's your current occupation? 13 A. Entrepreneur. 14 Q. Excuse me, I didn't catch that. 15 A. Entrepreneur. 16 Q. Entrepreneur. 17 Do you have an employer? 18 A. Yes. 19 Q. Who is that person? 20 A. It's not a person. 21 Q. When you say "it's not a person," 22 what is the employer? Who's the employer? 23 A. Digital Gadgets; it's an entity. 24 Q. Do you know the form of this 25 business entity?</p>	<p>1 A. I don't recall what year. 2 Q. Okay. 3 Other than officer and owner of 4 Digital Gadgets, are you a director? 5 Strike that. 6 Are you the sole managing member 7 of Digital Gadgets? 8 A. I am the managing member. 9 Q. Are you familiar with a company 10 called Techpoint, LLC, one word, 11 T-E-C-H-P-O-I-N-T? 12 A. Yes. 13 Q. And do you know any business 14 affiliation between Techpoint, LLC and Digital 15 Gadgets? 16 A. Yes. 17 Q. And what is that business 18 affiliation? 19 A. Techpoint, LLC sources certain 20 products for Digital Gadgets and serves as an 21 agency for sourcing products. 22 Q. When you say "sourcing products," 23 can you explain to me what "sourcing" means? 24 A. Means finding sources that have 25 products that may be applicable for sale by</p>

<p>(Tebele Exhibit 3, Document bearing Bates stamp Interworks 7, marked for identification.)</p> <p>Q. This letter apparently was written by Thomas Carulli, supposedly a lawyer working for this firm. I'm looking at the letterhead; Kaplan, Massamillo & Andrews. Have you ever seen this document?</p> <p>A. Yes.</p> <p>Q. Did you hire this law firm to write this letter to Interworks?</p> <p>A. Yes.</p> <p>Q. And let's look at the first paragraph.</p> <p>Says "Dear Mr. Lu, we represent Digital Gadgets, LLC. This is to place you on notice that Interworks has violated the exclusive right granted DG," that's Digital Gadgets, "to sell Interworks products to and through QVC, moreover, at a price less than offered by Digital Gadgets, resulting in significant and irreparable harm to Digital Gadgets."</p> <p>A. Yes, it was terrible.</p> <p>Q. There are two issues raised by</p>	<p>multiple occasions, I spoke to QVC. I mean this was a heavy issue, this wasn't a light issue and we would never, as our company policy, sell something that someone else makes, to then have that company go and compete with us on the same thing.</p> <p>Q. Well, that's fair.</p> <p>So Chris Mitchell reported this to you; what did he tell you, if anything, that you recall pertaining to this exclusive right?</p> <p>A. Look, I had many conversations with Chris Mitchell and with Eric, but what I will say is Interworks was in a jam, we helped them, and explicit in the help was this exclusive, which was being honored for a time, but then at some point, Interworks decided to go rogue and go behind our backs, so it was not just implied, it was the tone of the entire relationship. And, moreover, we were discussing further exclusive and further accounts, so it wasn't that it was this one little thing, it was beyond that.</p> <p>At some point, Interworks just decided that they were gonna not honor it.</p>
<p>1 this paragraph. One, the first one was the 2 exclusive right. You don't recall seeing any 3 written documents or written agreements signed 4 by Interworks and Digital Gadgets pertaining 5 to this exclusive right?</p> <p>A. I don't know about a written agreement, however there is a certain agreement without question between Interworks and Digital Gadgets that when Digital Gadgets was selling those goods to QVC, which Interworks was stuck with and QVC canceled their orders with, that Digital Gadgets would fill Interworks' shoes as the exclusive partner, there's no doubt about that.</p> <p>Q. When you say "there's no doubt about that," you know, what proof do you recall?</p> <p>MR. LAZARUS: Objection to the form of the question.</p> <p>Q. Let me ask you this: When you say there's no doubt about this exclusive right, have you ever seen any e-mails sent by Eric Lu?</p> <p>A. I've seen e-mails, I was on conversations, I spoke to Chris Mitchell on</p>	<p>1 Q. Okay. 2 To your knowledge, is -- A. Which caused us a tremendous amount of lost work and time and reputation. Q. Do you know if Interworks is currently selling hoverboards to QVC? A. I don't understand the question. Q. To your personal knowledge, is Interworks selling hoverboards to QVC now? A. At this moment, I don't know. Are they in business? Q. Which party is in business? A. Is Interworks still in business? Q. That's why I'm here. A. I don't understand. Q. Well, you know, maybe your attorney can ask my client that question two weeks from now. A. Okay. I don't know if they are selling it. I don't even know if they are in business. I'm hearing all kinds of things in the trade about deceptive things that they are doing, so I don't know if they are there, they are not there, they are selling, they are not selling, I don't know.</p>

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1 Q. You heard something about
2 Interworks going out of business?
3 **A. I'm speculating. I'm wondering.**
4 **I'm asking you.**
5 Q. Unfortunately, I can't give you
6 that answer.
7 But your attorney can ask my
8 client a couple weeks from now, two, three
9 weeks from now.
10 **A. Okay. I just don't wanna -- you**
11 **are asking me if they are selling something, I**
12 **don't even know if they are in business, so**
13 **I'm trying to --**
14 Q. All I'm trying to get --
15 **A. How would I know what they are**
16 **doing?**
17 Q. Did you hear from QVC that they
18 are still selling to QVC?
19 **A. It's not something that I**
20 **discussed with QVC on a daily basis.**
21 Q. Okay. That's a good answer.
22 The -- if you look at the second
23 paragraph, a reference of insurance coverage
24 was mentioned. Do you know why lack of
25 insurance coverage was an important issue at

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1 these hoverboards supplied by Interworks?
2 **A. Doesn't the letter state that?**
3 Q. Yes, it does say that. I mean,
4 I'm asking you -- well, let me try to ask
5 another question.
6 When you had this letter written
7 to Interworks, did Interworks promptly show
8 you sufficient insurance coverage to alleviate
9 your such concern?

10 **A. Are you saying -- are you asking**
11 **me if we had insurance I would still go and**
12 **pay money to hire a lawyer and write a letter**
13 **that we didn't have insurance?**

14 Q. No. The question is, after you
15 sent this letter, after, did you or anybody
16 else at Digital Gadgets receive satisfactory
17 explanations from Interworks?

18 **A. I know that there was attempt to**
19 **resolve the insurance issue by Interworks. I**
20 **don't know if it was quote/unquote**
21 **satisfactory, but I do know that there was**
22 **certain actions taken as a result of this**
23 **letter to mitigate what -- maybe what**
24 **Interworks felt it needed to provide.**

25 Q. Subsequent to sending this

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1 the time when this letter was written?
2 **A. Why insurance is important?**
3 Q. Why lack of insurance coverage
4 was an important issue?
5 **A. It's a requirement of doing**
6 **business, and part of the product -- when QVC**
7 **approves a product for sale, there are certain**
8 **requirements. If insurance on that product is**
9 **part of the approval, it becomes part of**
10 **the -- you can't separate the insurance from**
11 **the product. If QVC approves the product that**
12 **has this cup with this holder with this lid,**
13 **and you take off the lid, it's no longer the**
14 **cup.**
15 **You follow what I'm saying?**
16 Q. Yes, I follow.
17 **A. So if the board doesn't have the**
18 **insurance and it was approved with the**
19 **insurance, then the lack of the insurance**
20 **makes the product not what it was represented**
21 **to be.**
22 Q. Okay.
23 The -- at the time, did you, I
24 mean Digital Gadgets, have serious concern on
25 lack of insurance coverage with respect to

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1 letter, did you realize that it was actually a
2 non-issue?
3 **A. No.**

4 Q. Are you aware Digital Gadgets had
5 to purchase insurance subsequent to sending
6 this letter to Interworks?

7 **A. Am I aware that Digital Gadgets**
8 **had to purchase -- if Interworks didn't solve**
9 **the problem, then Digital Gadgets would have**
10 **had to purchase insurance. I don't know the**
11 **dates and times, but if we had to do something**
12 **to mitigate damages, we would have done that**
13 **based on our relationship with QVC.**

14 Q. Right, QVC would have required
15 you, meaning your company, to provide that
16 coverage, if Interworks failed to provide one,
17 right?

18 **A. If it was provideable (sic) by**
19 **us. It's not like you could just go out and**
20 **like buying a pack of gum in the store, not**
21 **like saying, okay, you don't have it, I'll do**
22 **it, it's an intricate piece of equipment that**
23 **many insurance companies will not insure.**

24 Q. Do you personally involve in
25 obtaining or procuring such insurance coverage

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<p>1 Q. The question, very simple: Did 2 you know Digital Gadgets had to submit samples 3 to QVC for testing and approval before you 4 started selling them?</p> <p>5 A. That's not true.</p> <p>6 Q. Not true?</p> <p>7 A. No. In this case, because Interworks purported to sell us the unit that was already approved by QVC, QVC allowed us to sell it based on our reputation and vouching for the fact that it was the same model, so we began to sell it without submitting a sample. And only after five months later when we needed to submit a sample for a new program and new orders did we then submit them a sample, and then determined that what we were selling them all along was fraudulent.</p> <p>8 Q. You are 100 percent sure about 9 that?</p> <p>10 A. I'm sure of what I just said.</p> <p>11 Q. Okay.</p> <p>12 That's very good answer. I'm 13 just --</p> <p>14 A. That doesn't mean that's 100 percent of what occurred.</p>	<p>1 A. That's what it says.</p> <p>2 Q. Okay.</p> <p>3 Does it say that the -- by the 4 way, what is the products described on this 5 report?</p> <p>6 A. (No response.)</p> <p>7 Q. Description on top, you see Chic 8 High Roller Self Balancing Hoverboard W? I 9 don't know what that "W" means. Do you know, 10 W slash --</p> <p>11 A. What are you asking me?</p> <p>12 Q. I'm asking if you know what that 13 means? I have no idea what that means. What 14 the W at the end and slash, what does that 15 mean?</p> <p>16 A. Probably is truncated that there's some words after that, but it doesn't pick up on the form.</p> <p>17 Q. The reason I was asking you, 18 because I don't know what that means. 19 If you go through this report, it 20 seems like the samples submitted by Interworks 21 to QVC passed the testing?</p> <p>22 A. Yes.</p> <p>23 Q. Is there anything -- you see the</p>
<p>24 Page 82</p> <p>1 Q. Well, that's based on your 2 recollection that's what happened, right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 MR. HSU: Let's mark this as 8. 6 (Tebele Exhibit 8, Document 7 bearing Bates stamps Interworks 212 8 through Interworks 221, marked for 9 identification.)</p> <p>10 Q. Exhibit 8 is a computer generated 11 form on top of the first page says QVC, QA 12 sample, evaluation report?</p> <p>13 A. Correct.</p> <p>14 Q. And have you ever seen this 15 entire report?</p> <p>16 A. I have seen this form. I don't 17 know if I've seen this report before, but I'm 18 familiar with the form.</p> <p>19 Q. And if you look at those days, 20 probably the seventh or eighth line from the 21 top, indicates that the sample evaluation due 22 date, pick due date, requested due date, look 23 at those days, do those tell you that the 24 samples were submitted to QVC by Interworks in 25 early October?</p>	<p>24 Page 82</p> <p>1 second page of this exhibit, the Bates number 2 Interworks 213 in the midsection of the page 3 where it says battery identification, four 4 battery packaging, four general electrical 5 requirement test, Interworks passed all of 6 those things, right?</p> <p>7 A. I don't know what -- I mean you 8 are making a statement, I guess, yeah.</p> <p>9 Q. So you were saying that 10 Interworks -- I'm trying to understand what 11 your claim is. One of your claims is that 12 Interworks fraudulently --</p> <p>13 A. Interworks had got this board 14 approved.</p> <p>15 Q. Right.</p> <p>16 MR. LAZARUS: Referring to?</p> <p>17 A. Interworks 212.</p> <p>18 Q. This is 8.</p> <p>19 A. The item on this Exhibit Number 8 20 was approved for sale by QVC.</p> <p>21 Q. And QVC --</p> <p>22 A. And you want me to continue to 23 answer, make it easier?</p> <p>24 Q. Sure.</p> <p>25 A. Interworks sold us this board,</p>

1 (Tebele Exhibit 16, Document
 2 bearing Bates stamp Digital gadgets 35,
 3 marked for identification.)
 4 Q. 16, there is a short e-mail on
 5 top from Eric Lu to Chris Mitchell in
 6 December, specifically on December 21, 2016.
 7 It says "Chris, see my comments
 8 below in red. I'll give you a call shortly."
 9 In response to Chris Mitchell's
 10 e-mail to Eric Lu dated the same day earlier
 11 than that, well, yes, a little earlier than
 12 3:04 a.m., was 9:26 a.m. in the morning, here
 13 by the way, have you received this e-mail from
 14 Chris Mitchell?
 15 **A. Did I receive this e-mail from**
 16 **Chris Mitchell?**
 17 Q. Right.
 18 Did he subsequently forward it to
 19 you?
 20 **A. I don't remember.**
 21 Q. And says -- Chris Mitchell says
 22 here "Eric" starting from the second paragraph
 23 "current order QVC isn't going to be able to
 24 resolve the lithium battery reissue until next
 25 month."

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1 Q. And discuss our partnership
 2 further?
 3 **A. Yep.**
 4 Q. So you did discuss, meaning your
 5 company, did discuss this exclusive agreement
 6 with Eric Lu?
 7 **A. Yes.**
 8 Q. At the trade show, and what was
 9 your recollection on Eric Lu's response or
 10 anything that he said in Las Vegas -- when you
 11 met Eric Lu, did he agree to give that
 12 exclusive deal to you guys?
 13 **A. There was no doubt that he agreed**
 14 **that as long as we had inventory in place that**
 15 **we remained the exclusive partner. We would**
 16 **never buy somebody else's goods for them to go**
 17 **sell them to the same customer behind our**
 18 **back. The discussion further was we were**
 19 **discussing other accounts to extend the**
 20 **exclusive to.**
 21 Q. Did you also at Las Vegas discuss
 22 the payment terms such as consignment?
 23 **A. It's possible.**
 24 Q. But you don't remember sitting
 25 here?

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1 Are you aware of such issue
 2 existing in December of 2016?
 3 **A. That's a different issue. That's**
 4 **a different lithium battery issue than what we**
 5 **are talking about with the QA.**
 6 Q. Right.
 7 And you say is a different issue?
 8 **A. It has nothing to do with the QA.**
 9 Q. Okay.
 10 And was this around the time when
 11 Chris Mitchell was negotiating with Eric on
 12 the price terms along with the other terms for
 13 the sale of the hoverboards?
 14 **A. It appears to be.**
 15 Q. And when Chris Mitchell
 16 mentioned -- you see down below like one, two,
 17 three, four, fourth bullet point, if you look
 18 at the second one?
 19 **A. Yep.**
 20 Q. Received exclusive agreement to
 21 supply chip listen board to QVC for 2017 and
 22 then Eric's comment is yes, we can put this
 23 agreement to you, but let's have our meetings
 24 and see it and that's the trade show, right?
 25 **A. Yes.**

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1 **A. Again, there was a sequence of**
 2 **events and a lot of conversations. I don't**
 3 **know what conversation was at CES versus on**
 4 **the phone, but it was a fluid situation.**
 5 (Tebele Exhibit 17, Document
 6 bearing Bates stamp Digital Gadgets 80,
 7 marked for identification.)
 8 Q. Next one is 17. Have you ever
 9 seen this certificate of liability insurance?
 10 **A. Possibly.**
 11 Q. You see towards the bottom left
 12 underneath two words certificate, Digital
 13 Gadgets, LLC and that's your company, right?
 14 **A. Yes.**
 15 Q. On top -- well, it's not very
 16 top, it's like ninth or tenth or twelfth line
 17 from the top, you see under the insured
 18 Interworks Unlimited, Inc.?
 19 **A. Yes.**
 20 Q. Was printed there, so the insured
 21 of this policy was Interworks?
 22 **A. Yes.**
 23 Q. And your company was made as an
 24 additional insured?
 25 **A. Yes.**

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1 submitted this certificate to QVC around the
 2 time Digital Gadgets received this from
 3 Interworks?

A. What's the question again?

Q. Do you know if Digital Gadgets ever submitted this certificate of liability insurance to QVC ever?

A. I don't know.

(Tebele Exhibit 20, Document

bearing Bates stamps Digital Gadgets 244 through Digital Gadgets 247, marked for identification.)

Q. 20 has a number of pages.

These documents were produced by Digital Gadgets.

If you see the second e-mail from the top on Digital Gadgets 244, this e-mail was sent by Chris Mitchell to Eric, presumably Eric Lu, and you were cc'd on it. Do you see that?

A. Yep.

Q. And Chris Mitchell first said "Eric understood about wanting the boards back. We were honoring the consignment backup agreement per our conversation. But if that's

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1 approved from my factor."

2 Did Eric Lu write all of these
 3 responses in bold printed form?

A. I don't know, looks like it.

Q. And here he was complaining to you guys that if you had been approved by my vendor, I would have given this consignment backup agreement to you guys at the time this e-mail was sent to them, to Eric Lu, to your recollection, Interworks' factor never approved your company on this credit line of \$1 million, right?

A. I have no idea. It looks to be he shipped it, bought approval from his factor and maybe he was in trouble or something. I don't know what -- I don't know what -- I don't know what the inner workings between him and his factor are, but we don't have any obligation as Digital Gadgets to satisfy his factor. His factor relationship is between him and his factor.

Q. If you look down below, there's -- it seems like there is a spreadsheet prepared by Chris Mitchell to Eric Lu. If you can help me go over the

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1 no longer an option for you, we can send back
 2 the remaining boards."

What is the consignment backup agreement Chris Mitchell was talking about here, if you know?

A. Basically, that there were, throughout the negotiations, like I said, it was fluid and what they agreed to was rather than shipping the boards back and forth between Interworks and Digital Gadgets and having them sit in one warehouse or another, since they were only for QVC that we would pay them based on when they were sold. So that's, I mean, call it a consignment agreement, but it's not a very technical term. Consignment agreement would basically mean to me we would pay for the goods per specific agreement as they were sold.

Q. Okay.

And then the -- see there's some bold printed lines or words starting from an arrow pointing to the left, "I have honored everything" that -- "everything I've said. I told you guys I would give you terms/consignment if you guys would get

1 second page of the document, where you can see
 2 not this page, can you just briefly go to a
 3 second page?

A. Yes.

Q. Second page on top to the right, you see the total received number is 10,608 units?

A. Yes.

Q. Is that consistent with your recollection of how many units of hoverboards --

A. I previously answered I'm not sure how many hoverboards were received, but if this e-mail states -- the e-mail stands on its own. The statement is what it is.

Q. Okay.

But you mention about computer data and software. If you have to retrieve this information or spreadsheet from your computer you would be able to do that, right?

A. Yes.

Q. After you received these e-mails from Chris Mitchell and Eric Lu, did you remember -- did you remember you had a meeting or a couple of meetings with Chris Mitchell?

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